

IC 8-1.5-4

Chapter 4. Department of Waterworks in Certain Municipalities

IC 8-1.5-4-1

Application of chapter

Sec. 1. This chapter applies to all municipalities that:

- (1) own or operate waterworks; and
- (2) adopt the provisions of this chapter by ordinance.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-1.5

Certain municipalities operating a waterworks through a department before January 1, 1982

Sec. 1.5. (a) A municipality having and operating a waterworks through a department of waterworks before January 1, 1982, under IC 19-3-15 (before its repeal on January 1, 1983) or under IC 19-3-27 (before its repeal on January 1, 1983) shall be deemed to have established a department of waterworks, as authorized by section 2 of this chapter, having the same number of board members as the board operating before January 1, 1982, and having the same powers, obligations, and duties as would be the case if the legislative body of the municipality had adopted an ordinance doing so before January 1, 1983, in accordance with Acts 1982, P.L.74, SECTION 5(b).

(b) Except as provided in subsection (c), the board of directors of the department of waterworks shall operate as both the board and the municipal legislative body for the purposes of IC 8-1.5-3-4 and IC 8-1.5-3-8.

(c) This subsection applies to water utilities that have been removed from the jurisdiction of the Indiana utility regulatory commission under IC 8-1.5-3-9.1 after June 30, 1991. The board of directors of the department of waterworks shall operate as the board for the purposes of IC 8-1.5-3-4 and IC 8-1.5-3-8.

As added by P.L.105-1983, SEC.3. Amended by P.L.16-1984, SEC.7; P.L.3-1990, SEC.29; P.L.56-1992, SEC.1.

IC 8-1.5-4-2

Department of waterworks; establishment; board of directors

Sec. 2. (a) If the legislative body of a municipality, by ordinance, adopts the provisions of this chapter, there is established a department of waterworks to be controlled by a board of directors (referred to as "the board" in this chapter). The board consists of either three (3) or five (5) directors, as determined by ordinance, who shall be appointed by the municipal executive.

(b) In case there are three (3) directors, not more than two (2) may be of the same political party. In case there are five (5) directors, not more than three (3) may be of the same political party.

(c) The terms of directors shall be prescribed by ordinance, but initial terms must be prescribed so that the directors' terms will be staggered. Each director shall give a bond, which shall be fixed by the municipal fiscal officer and is subject to his approval.

(d) The executive may remove a director at any time when, in his judgment, it is for the best interest of the department.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-3

Special taxing district

Sec. 3. The department of waterworks has jurisdiction over a special taxing district (referred to as "the waterworks district" in this chapter) that consists of:

- (1) in the case of a second class city located in a county having a population of more than one hundred seventy thousand (170,000) but less than one hundred eighty thousand (180,000), all the territory within that county; or
- (2) in the case of any other municipality, all the territory within the corporate boundaries of the municipality, or the territory served by the waterworks if larger or smaller than the corporate boundaries.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.12-1992, SEC.59; P.L.170-2002, SEC.60.

IC 8-1.5-4-4

Board; powers and duties

Sec. 4. The board has the powers and duties prescribed by IC 8-1.5-3-4. In addition, the board:

- (1) may hold hearings following public notice;
- (2) may make findings and determinations;
- (3) may design, order, contract for or construct pumping plants or stations, filtration plants, reservoirs, water mains, hydrants, and other equipment, structures, and appurtenances and rebuild, equip, improve, extend, and repair plants, equipment, and structures;
- (4) may build or have built all roads, levees, walls, or other structures that may be necessary or desirable in connection with waterworks;
- (5) make all necessary or desirable improvements of the grounds and premises under its control;
- (6) may issue and sell bonds for the construction, alteration, addition, or extension to the waterworks, in the manner prescribed by law, including the provisions of IC 8-1.5-2; and
- (7) shall furnish an adequate supply of water to consumers within the waterworks district.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-5

Water filtration and service facilities; acquisition, construction, and operation; financing methods

Sec. 5. The acquisition, construction, installation, operation, and maintenance of facilities and land for water filtration and water service may be financed through proceeds from tax levies, proceeds of special taxing district bonds of the waterworks district, service

rates, revenue bonds, or any other available funds.
As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-6

Authority to set aside revenues for operation and maintenance, a depreciation account, and payment of bonds

Sec. 6. The board may fix and set aside:

- (1) the proportion of the revenues of the waterworks department necessary for reasonable and proper operation and maintenance;
- (2) the proportion of the revenues for a proper and adequate depreciation account; and
- (3) the fixed proportion of the revenues to be applied to the payment of the principal and interest of the authorized bonds.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-7

Revenues set aside for operation and maintenance

Sec. 7. (a) In fixing the proportion of the revenues of the waterworks department required for operation and maintenance, the board shall consider the cost of the operation and maintenance of the waterworks, and may not set aside into the special fund a greater amount of the revenues and proceeds than, in its judgment, is required for the operation and maintenance.

(b) If a surplus is accumulated in the operating and maintenance fund, and that surplus is equal to the cost of maintaining and operating the waterworks system during the remainder of the current calendar, operating, or fiscal year and during the next calendar, operating, or fiscal year, any excess over that surplus may be transferred by the board to either the depreciation account, to be used for any improvements, extensions, or additions to the waterworks, or to the bond and interest redemption account.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-8

Revenues set aside for payment of bonds

Sec. 8. (a) The fixed proportion set aside for the payment of the principal and interest of the authorized bonds shall, from month to month, as accrued and received, be set apart and paid into a special account identified as "the bond and interest redemption account".

(b) In fixing and determining the amount that is to be set aside for the payment of the principal and interest of the authorized bonds, the board may provide that the amount to be set aside and paid into the bond and interest redemption account for any year or years should not exceed a fixed sum, which must be at least sufficient to provide for the payment of the interest and principal of the bonds maturing and becoming payable in each year, together with a surplus or margin of ten percent (10%) in excess.

(c) If a surplus created in the bond and interest redemption account exceeds the interest and principal of any bonds becoming payable during the current calendar, operating, or fiscal year and

during the next calendar, operating, and fiscal year, the board may transfer any excess over the surplus to either the operation and maintenance account, or the depreciation account, as the board may designate.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-9

Revenues set aside for depreciation account

Sec. 9. (a) The proportion set aside to the depreciation account shall be expended in making good depreciation in the waterworks or in new construction, extensions, or additions to the property of the waterworks.

(b) Any accumulations in the depreciation account may be invested by the board, and if invested, the income from the investment shall be carried in the depreciation account. The board may invest the funds in accordance with IC 5-13-9.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.19-1987, SEC.21.

IC 8-1.5-4-10

Secured debt or charge

Sec. 10. (a) The board may authorize and set apart bonds equal to the amount of any secured debt or charge subject to which a waterworks may be purchased or acquired in any proceeding, and shall set aside for interest and sinking fund from the income and revenue of the waterworks a sum sufficient to comply with the requirements of the instrument creating the lien or securing the charge.

(b) If the instrument does not make any provision, the board shall set aside into the secured-debt account from month to month for interest on the secured debt or charge an amount sufficient to provide for the payment of the interest on the secured debt or charge, and at the option of the board either an annual amount sufficient to retire the secured debt or charge at maturity or bonds issued under this chapter equal to the secured debt or charge. Any surplus after satisfying the secured debt or charge may be transferred to the bond and interest redemption account.

(c) Waterworks bonds set aside for a debt may, from time to time, be issued in an amount sufficient with the amount then in the sinking fund to pay and retire the debt or any part thereof. The bonds may not be issued at less than par value in exchange for, or satisfaction of, the secured debt or charge, or may be sold in the manner provided by this chapter, and the proceeds applied in payment of the same at maturity or before maturity by agreement with the holder. A municipality acquiring a waterworks does not assume any liability for the payment of a secured debt or charge, other than the obligation to apply the revenues in the manner prescribed in the ordinance.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-11

Bonds and interest issued against special redemption fund

Sec. 11. (a) The bonds and the interest issued against the special redemption fund:

(1) are a valid claim of the holders only against that fund and the fixed proportion or amount of the revenues pledged to that fund; and

(2) are exempt from taxation in Indiana as provided by IC 6-8-5.

(b) The bonds may be issued either as registered bonds or as coupon bonds payable to bearer. Coupons and bearer bonds may be registered as to principal in the holder's name on the books of the municipality, registration being noted on the bond by the municipal clerk or other designated officer, after which no transfer is valid unless made on the books of the municipality by the registered holder and similarly noted on the bonds. Any bond so registered as to principal may be discharged from registration by being transferred to bearer, after which it is transferable by delivery but may be again registered as to principal as before. The registration of the bonds as to the principal does not restrain the negotiability of the coupons by delivery, but the coupons may be surrendered and the interest made payable only to the registered holder of the bonds. If the coupons are surrendered, the surrender and cancellation shall be noted on the bond, and interest on the bond is then payable to the registered holder on order in cash or at his option by check or draft payable at the place or one (1) of the places where the coupons were payable.

(c) Bonds shall be sold in accordance with IC 5-1-11.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-12**Bonds; additional issue or issues for extension, addition, or improvement**

Sec. 12. A board acquiring waterworks and paying for them and for extensions and betterments authorized at the time of acquisition may provide for the extension, addition, or improvement of the waterworks by an additional issue or issues of bonds. A board may issue new bonds in the manner provided in this chapter and secured in the same manner, to provide funds for the payment of the principal and interest of any bonds then outstanding.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-13**Bonds; application of proceeds; default**

Sec. 13. (a) All money received from bonds issued under this chapter shall be applied solely to the acquisition of the waterworks and the cost of the issuance of the bonds.

(b) Any holder of the bonds or of any of the coupons attached to them may, by action or other proceeding, compel performance of all duties required by this chapter of the board issuing the bonds or of any officer of the board, including the making and collecting of reasonable and sufficient rates lawfully established for service rendered by the waterworks, the segregation of the income and

revenues of the utility, and the application of the respective funds created under this chapter.

(c) If there is any default in the payment of the principal or interest of any of the bonds, a court having jurisdiction of the action may:

(1) appoint an administrator or receiver to administer the waterworks on behalf of the municipality and the bondholders, with power to:

(A) charge and collect rates lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the waterworks; and

(B) apply the income and revenues in conformity with this chapter and the ordinance; or

(2) declare the whole amount of the bonds due and payable and direct the sale of the waterworks.

Under a sale ordered as provided by subdivision (2), the purchaser is vested with an indeterminate permit as defined in IC 8-1-2-1 to maintain and operate the waterworks to supply water to the municipality and its citizens.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-14

Services rendered to municipality; payment

Sec. 14. (a) This subsection applies to a municipality that is not subject to IC 8-1-2-103(c) or has not adopted an ordinance to become subject to IC 8-1-2-103(d). The reasonable cost and value of any service rendered to the municipality by the waterworks by furnishing water for public purposes or by maintaining hydrants and other facilities for fire protection shall be:

(1) charged against the municipality; and

(2) paid for in monthly installments as the service accrues out of the current revenues of the municipality, collected or in process of collection, and the tax levy of the municipality made by it to raise money to meet its necessary current expenses.

(b) This subsection applies to a municipality that is subject to IC 8-1-2-103(c), that has adopted an ordinance to become subject to IC 8-1-2-103(d), or that has adopted a plan described in IC 8-1-2-103(d) as prescribed in IC 8-1-2-103(e). The reasonable cost and value of any service rendered to the municipality by the waterworks by furnishing water for public purposes shall be:

(1) charged against the municipality; and

(2) paid for in monthly installments as the service accrues out of the current revenues of the municipality, collected or in process of collection, and the tax levy of the municipality made by it to raise money to meet its necessary current expenses.

Except as provided in subsection (d), the cost and value of maintaining hydrants and other facilities for fire protection shall be excluded from the charges against the municipality and shall be recovered from the other customers of the waterworks beginning on

January 1, 1994, in a municipality subject to IC 8-1-2-103(c) and beginning on a date provided in the ordinance for a municipality that adopts an ordinance under IC 8-1-2-103(d). The change in the recovery of current revenue authorized by this section shall be reflected in a schedule of new rates to be filed with the commission at least thirty (30) days before the time the schedule of new rates is to take effect.

(c) The compensation for the service provided to the municipality shall, in the manner prescribed by this chapter, be paid into the separate and special fund created by setting aside the income and revenues of the waterworks and is subject to apportionment to the operating, maintenance, depreciation, and bond and interest redemption accounts.

(d) This subsection applies to a city having a population of more than forty-six thousand five hundred (46,500) but less than fifty thousand (50,000). The cost and value of maintaining hydrants and other facilities for fire protection may be recovered from customers of the waterworks residing:

(1) in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000); and

(2) in a township having a population of more than seven thousand five hundred (7,500) but less than nine thousand (9,000) located in a county having a population of more than one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000);

beginning on a date determined by the city. The city shall file a new schedule of rates with the commission as set forth in subsection (b), but is not subject to commission approval of the rates.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.93-1993, SEC.2; P.L.80-1997, SEC.18; P.L.133-1998, SEC.1; P.L.170-2002, SEC.61.

IC 8-1.5-4-15

Construction, extension, or improvement; procedure

Sec. 15. (a) If, upon investigation, the board finds:

(1) that the waterworks, plant, system, or equipment is insufficient to furnish the necessary supply of water to properly protect the public health and welfare and safeguard the property within the waterworks district; or

(2) that it is necessary to rebuild, repair, extend, and improve the waterworks, plant, systems, and equipment and to acquire lands, construct, erect, or acquire other plants, reservoirs, systems, and other structures and equipment appurtenant to them;

the board shall prepare maps, plans, specifications, and drawings with full details and descriptions for the proposed work, together with an estimate of the cost. The board shall also prepare a description of all property rights necessary to be acquired in connection with the proposed work and the manner in which the

rights are to be acquired, whether by purchase or appropriation, along with a description of any other lands that may be injuriously affected, together with the estimated cost.

(b) The board shall then adopt a resolution:

- (1) declaring that it is necessary for the protection of the public health and welfare of the inhabitants of the waterworks district and the safeguarding of the property within the district;
- (2) declaring that it is of public utility and benefit;
- (3) appropriating the property described in the resolution;
- (4) stating the maximum proposed cost of any land to be purchased; and
- (5) adopting plans, maps, specifications, drawings, details, descriptions, and estimates.

(c) If the resolution is adopted, the board shall publish a notice in accordance with IC 5-3-1 of the adoption, the resolution, and the fact that plans, specifications, and estimates have been prepared and can be inspected. The notice must also name a date, not less than ten (10) days after the date of the last publication, when the board will receive or hear remonstrances from the persons interested in, or affected by, the resolution, and when it will determine their public utility and benefit. Notice shall be mailed to the owners of all lands appropriated by the resolution. If a landowner is a nonresident and his place of residence is known, a notice shall be mailed to the nonresident owner. If the nonresident owner's residence is unknown to the board, then he is considered notified of the pendency of the proceedings by the publication of notice.

(d) In the resolution and notice, separate descriptions of each piece or parcel of land are not required, but it is a sufficient description of the property purchased or to be purchased, or to be appropriated or damaged, to give a description of the entire tract, whether it is one (1) or more lots or parcels and whether it is owned by one (1) or more persons.

(e) All persons affected by the proceedings, including all taxpayers in the waterworks district, are considered to be notified of the proceedings and all subsequent acts, hearings, adjournments, and orders of the board by the original publication of notice.

(f) The board may, before adoption of the resolution, obtain from the owners of the land an option for its purchase or may enter into a contract for its purchase after an appraisal by two (2) qualified land surveyors. Such an option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution.

As added by Acts 1982, P.L. 74, SEC.1.

IC 8-1.5-4-16

Lands, rights-of-way, or other property; ownership in name of municipality; remonstrances

Sec. 16. (a) All lands, rights-of-way, or other property, when acquired, either by purchase or appropriation, shall be taken and held in the name of the municipality.

(b) At the time fixed for the hearing or before the hearing, the

following persons may file a written remonstrance with the board:

- (1) The owner of land, rights-of-way, or other property to be appropriated under the resolution.
- (2) A person injuriously affected by the appropriation.
- (3) A person owning real or personal property within the waterworks district.

(c) The board shall hear all persons interested in the proceedings, hear all the remonstrances that have been filed, and take final action on the resolution. The final action shall be recorded.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-17

Appeals

Sec. 17. (a) A person who has remonstrated in writing and is aggrieved by the decision of the board may, within thirty (30) days, take an appeal to the circuit or superior court of the county in which the waterworks district is located.

(b) A remonstrator desiring to appeal from the action of the board shall, within thirty (30) days after the final action of the board, file in the office of the clerk of the circuit or superior court a copy of the order of the board and the remonstrance, together with a bond conditioned to pay the costs of the appeal, should the appeal be determined against him.

(c) The court may hear the appeal only if the question is whether the board acted arbitrarily or capriciously in adopting the resolution.

(d) The cause shall be tried to the court without a jury.

(e) All remonstrances upon which appeals are taken may be consolidated and heard as one (1) claim for relief by the court.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-4-18

Special taxing district bonds of the waterworks district; issuance

Sec. 18. (a) To procure money to pay for the required property and the erection and construction of the proposed work, and in anticipation of the collection of the special benefit tax, the board may issue, in the name of the municipality, the special taxing district bonds of the waterworks district. The bonds may exceed the total cost of the work and property to be acquired as provided for in the resolution, including:

- (1) all expenses necessarily incurred for supervision and inspection during the period of construction; and
- (2) expenses actually incurred preliminary to the acquiring of the necessary property and the construction of the work, including the cost of records, engineering expenses, publication of notices, salaries, and other expenses incurred, before and in connection with the acquiring of the property, the letting of the contract, and the sale of bonds.

(b) After adopting a resolution authorizing the bonds, the board shall certify a copy of the resolution to the municipal fiscal officer, who shall then prepare the bonds. The bonds shall be executed by the

municipal executive and attested by the fiscal officer. The bonds are exempt from taxation as provided by IC 6-8-5. All bonds issued by the board shall be sold by the fiscal officer under IC 5-1-11.

(c) The board may not issue bonds of the waterworks district, payable by special taxation, when the total of the outstanding bonds of the district, including the bonds already issued and to be issued, exceeds eight percent (8%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15.

(d) The bonds are not a corporate obligation or indebtedness of the municipality, but are an indebtedness of the waterworks district. The bonds and interest are payable out of a special benefit tax levied upon all of the property of the waterworks district, or by any other means including revenues, cash on hand, and cash in depreciation or reserve accounts.

(e) The bonds must recite the terms upon their face, together with the purpose for which they are issued. An action to question the validity of the bonds issued for the waterworks district or to prevent their issuance may not be brought after the date fixed for the sale of the bonds.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.6-1997, SEC.131.

IC 8-1.5-4-19

Tax levy

Sec. 19. (a) To raise the necessary revenues to pay for the bonds issued, and interest on the bonds, the board:

(1) may levy a special benefit tax upon all the property of the waterworks district in the amount necessary to meet and pay the principal of the bonds as they severally mature, together with all accruing interest; and

(2) shall certify the tax levied each year to the fiscal officers of the municipality and of the county in which the waterworks district is located, at the same time the levy of the municipality is certified.

The tax levied and certified shall be estimated and entered upon the tax duplicate and shall be collected and enforced in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(b) In fixing the amount of the necessary levy, the board:

(1) shall consider the amount of revenues derived by the board from the operation of the waterworks plant and system under its jurisdiction above the amount of revenues required to pay the cost of operation and maintenance of the waterworks plant and system; and

(2) may, in lieu of making the levy in this section, set aside, by resolution, a specific amount of the surplus revenues to be collected before maturity of the principal and interest of the bonds payable in the following calendar year.

(c) The special tax shall be accumulated and kept in a separate fund to be known as the "waterworks district bond fund", and applied

to the payment of the district bonds and interest as they severally mature and are payable. All accumulations in the fund before their use for the payment of bonds and interest shall be deposited at interest with the depository of other public funds of the municipality, and all interest collected belongs to that fund.

(d) If the board adopts the resolution, the board may not use any part of the amount set aside out of its net revenues for any purpose other than the monthly payment of the bonds and interest to the sinking fund. Any amount of net revenues derived from the operation of the waterworks plant and system under the jurisdiction of the board, not required for the payment of the principal and interest on the outstanding waterworks district bonds, shall be paid over to the municipality and deposited in the sinking fund established for the purpose of redeeming and retiring outstanding bonds that the municipality may have issued for the benefit of its waterworks plant. This section does not relieve the municipality from the obligation to pay outstanding bonds according to their terms and conditions.

As added by Acts 1982, P.L. 74, SEC.1.